

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Raul E. Gonzalez,

Case No.: 2:19-cv-00214-JAD-VCF

4 Plaintiff

5 v.

**Order Screening
Complaint and Dismissing Case**

6 A.G. Adam Laxalt, et al.,

7 Defendants
8

9 Plaintiff Raul E. Gonzalez brings this civil-rights action under 42 U.S.C. § 1983,
10 claiming that his Fourteenth Amendment due-process and equal-protection rights were violated
11 during his incarceration at High Desert State Prison (HDSP). Because Gonzalez applies to
12 proceed *in forma pauperis*,¹ I screen his complaint under 28 U.S.C. § 1915A. Though Gonzalez
13 has demonstrated that he qualifies for pauper status, I find that he cannot plead a due-process
14 claim and has not pled an equal-protection claim, so I grant the application to proceed *in forma*
15 *pauperis* but dismiss the complaint in its entirety without leave to amend.

16 **I. Screening standard**

17 Federal courts must conduct a preliminary screening in any case in which a prisoner
18 seeks redress from a governmental entity or an officer or employee of a governmental entity.² In
19 its review, the court must identify any cognizable claims and dismiss any claims that are
20 frivolous or malicious, or that fail to state a claim upon which relief may be granted or seek
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23 ¹ ECF No. 1.

² See 28 U.S.C. § 1915A(a).

1 monetary relief from a defendant who is immune from such relief.³ All or part of the complaint
2 may be dismissed *sua sponte* if the prisoner's claims lack an arguable basis in law or fact. This
3 includes claims based on legal conclusions that are untenable, like claims against defendants who
4 are immune from suit or claims of infringement of a legal interest which clearly does not exist, as
5 well as claims based on fanciful factual allegations or fantastic or delusional scenarios.⁴

6 Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot
7 prove any set of facts in support of the claim that would entitle him or her to relief.⁵ In making
8 this determination, the court takes all allegations of material fact as true and construes them in
9 the light most favorable to the plaintiff.⁶ Allegations of a *pro se* complainant are held to less
10 stringent standards than formal pleadings drafted by lawyers,⁷ but a plaintiff must provide more
11 than mere labels and conclusions.⁸ "While legal conclusions can provide the framework of a
12 complaint, they must be supported with factual allegations."⁹ "Determining whether a complaint
13 states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court
14 to draw on its judicial experience and common sense."¹⁰

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18 ³ See 28 U.S.C. § 1915A(b)(1)(2).

19 ⁴ See *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); see also *McKeever v. Block*, 932 F.2d
795, 798 (9th Cir. 1991).

20 ⁵ See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).

21 ⁶ See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).

22 ⁷ *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); see also *Balistreri v. Pacifica Police Dep't*, 901 F.2d
696, 699 (9th Cir. 1990) (recognizing that pro se pleadings must be liberally construed).

23 ⁸ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

⁹ *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

¹⁰ *Id.*

1 **II. Screening Gonzalez's complaint**

2 Gonzalez sues multiple defendants for events that took place while Gonzalez was
3 incarcerated at HDSP.¹¹ Gonzalez sues Defendants Warden Brian Williams, NDOC Director
4 James Dzurenda, Attorney General Adam Laxalt, Attorney General Aaron Ford, and Associate
5 Warden Jennifer Nash.¹² He alleges one count and seeks monetary damages.¹³

6 In his complaint, Gonzalez alleges the following: Gonzalez was sentenced on May 7,
7 2007, when NRS § 209.4465(7) was in effect.¹⁴ The NDOC sent Gonzalez to the parole board
8 prematurely in 2014 due to his aggregated sentences.¹⁵ The parole board instructed the NDOC
9 to recalculate Gonzalez's parole date to sometime in 2016 but the NDOC failed to bring
10 Gonzalez before the parole board in 2016.¹⁶ Gonzalez complained to Williams but Williams
11 failed to respond.¹⁷ Gonzalez submitted a grievance to Nash but she denied his request as
12 untimely.¹⁸ Dzurenda ignored Gonzalez's notice.¹⁹ Laxalt and Ford were required to inform the
13 NDOC of the good time credit requirement under NRS § 209.4465(7).²⁰ Gonzalez alleges that
14 this conduct violated his Fourteenth Amendment rights to due process and equal protection.²¹

16 ¹¹ ECF No. 1-1 at 1.

17 ¹² *Id.* at 2–3.

18 ¹³ Daryl E. Gholson helped Gonzalez prepare the complaint. ECF No. 1-1 at 4, 8.

19 ¹⁴ *Id.* at 4.

20 ¹⁵ *Id.*

21 ¹⁶ *Id.*

22 ¹⁷ *Id.*

23 ¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.* at 4.

1 Gonzalez is challenging the defendants' failure to apply good-time credits to Gonzalez's
2 minimum sentence and parole-eligibility date as directed by NRS § 209.4465(7). NRS §
3 209.4465(7) permits good-time credits to be applied to a prisoner's minimum sentence in certain
4 circumstances, making an inmate eligible for parole sooner than he would have been without the
5 credits.²² Because Gonzalez's lawsuit involves his parole-eligibility date and not his underlying
6 conviction or overall sentence, a § 1983 action is the proper vehicle to raise such a challenge.²³
7 So I proceed to consider whether Gonzalez has pled any viable § 1983 claim.

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9 **A. Gonzalez cannot state a due-process claim because the law does not deem the
violation of state parole-eligibility requirements to be a due-process violation.**

10 In order to state a Fourteenth Amendment due process claim, a plaintiff must adequately
11 allege that he was denied a specified liberty interest and that he was deprived of that liberty
12 interest without the constitutionally required procedures.²⁴ But, in Nevada, state prisoners do not
13 have a liberty interest in parole or parole eligibility.²⁵ Additionally, allegations that a defendant
14 violated state law are not sufficient to state a claim for violation of the Fourteenth Amendment's
15 due-process clause.²⁶

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18 ²² See NRS § 209.4465(7); *Williams v. State Dep't of Corr.*, 402 P.3d 1260, 1262 (Nev. 2017).

19 ²³ See *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (holding that if a civil claim merely would
20 speed up the plaintiff's *consideration* for parole and would not necessarily imply the invalidity of
the duration of confinement, then that claim may proceed in a § 1983 action).

21 ²⁴ *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011).

22 ²⁵ See *Moor v. Palmer*, 603 F.3d 658, 661-62 (9th Cir. 2010); *Fernandez v. Nevada*, No. 3:06-
CV-00628-LRH-RAM, 2009 WL 700662, at *10 (D. Nev. Mar. 13, 2009).

23 ²⁶ *Swarthout*, 562 U.S. at 222 (holding that "a 'mere error of state law' is not a denial of due
process"); see also *Young v. Williams*, No. 2:11-CV-01532-KJD, 2012 WL 1984968, at *3 (D.
Nev. June 4, 2012) (holding that alleged error in applying good time credits to sentence was an
error of state law that did not constitute a due process violation).

1 I find that Gonzalez fails to state a colorable due process claim based on the allegations
2 that the defendants violated NRS § 209.4465(7)(b) and deprived him of an earlier parole-
3 eligibility date. Gonzalez cannot establish a liberty interest in his parole eligibility date, and the
4 failure to properly apply NRS § 209.4465(7) constitutes an error of state law and the law does
5 not recognize such an error as a valid basis for a due-process claim. So I dismiss Gonzalez's
6 due-process claim with prejudice because it fails as a matter of law and amendment would be
7 futile.

8 **B. Gonzalez has pled no facts to suggest an equal-protection violation.**

9 The Equal Protection Clause of the Fourteenth Amendment requires all similarly situated
10 persons be treated equally under the law.²⁷ In order to state an equal protection claim, a plaintiff
11 must allege facts demonstrating that defendants acted with the intent and purpose to discriminate
12 against him based upon membership in a legally recognized protected class, or that defendants
13 purposefully treated him differently than similarly situated individuals without any rational basis
14 for the disparate treatment.²⁸ Gonzalez fails to state a colorable equal-protection claim because
15 he makes no allegations to support such a claim. Accordingly, I dismiss the equal-protection
16 claim without prejudice. And because Gonzalez's allegations do not even hint at an equal-
17 protection issue, I find no basis to grant leave to amend.

18 **Conclusion**

19 IT IS THEREFORE ORDERED that the application to proceed *in forma pauperis*
20 without having to prepay the filing fee [ECF No. 1] is **GRANTED**.²⁹ Plaintiff need not pay an

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22 ²⁷ *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

23 ²⁸ *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001); *see also Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

²⁹ This order granting *in forma pauperis* status does not extend to the issuance or service of subpoenas at government expense.

1 initial installment fee, prepay fees or costs or provide security for fees or costs, but he is still
2 required to pay the full \$350 filing fee under 28 U.S.C. § 1915 as amended. **This full filing fee**
3 **remains due and owing even though this case is being dismissed.**

4 In order to ensure that plaintiff pays the full filing fee, IT IS FURTHER ORDERED that
5 the Nevada Department of Corrections must pay to the Clerk of the United States District Court,
6 District of Nevada, 20% of the preceding month's deposits to the account of **Raul E. Gonzalez,**
7 **#96597** (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid
8 for this action. The Clerk is directed to SEND a copy of this order to the attention of **Chief of**
9 **Inmate Services for the Nevada Department of Prisons,** P.O. Box 7011, Carson City, NV
10 89702.

11 IT IS FURTHER ORDERED that the Clerk of the Court is directed to **FILE** the
12 complaint [ECF No. 1-1] and send Gonzalez a courtesy copy.

13 Having screened the complaint, IT IS FURTHER ORDERED that:

- 14 • The due process claim is DISMISSED with prejudice, as amendment would be
15 futile, and without leave to amend; and
- 16 • The equal protection claim is DISMISSED without prejudice and without leave
17 to amend.

18 IT IS FURTHER ORDERED that **the Clerk of the Court is directed to CLOSE THE**
19 **CASE and ENTER JUDGMENT accordingly.**

20 I certify that any *in forma pauperis* appeal from this order would **not** be taken in good
21 faith as contemplated by 28 U.S.C. § 1915(a)(3).

22 Dated: November 19, 2019

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U.S. District Judge Jennifer A. Dorsey